PROCEEDINGS OF THE TRAVANCORE-COCHIN LEGISLATIVE ASSEMBLY

FIRST SESSION—1950

Friday, *the 21st April 1950*

Vol. I] OFFICIAL REPORT [No. 33

The Assembly met in the Legislative Chamber, Trivandrum, at 11 of the clock on Friday, the 21st April 1950 with Mr. Speaker in the Chair.

ശ്രീ. എം. ഐ. പാർ: സർ, പാർലമെൻറി പ്രൊസീഡിയർ അനുസരിച്ച് ഈ അസംബ്ലിയിൽ സ്പീക്കരുടെ നടപടിയെ വിമർശിക്കുന്നതിനു ഞാനൊരു സബ്സ്റ്റാൻറിവ് മോഷനു നോട്ടീസുകൊടുത്തിരുന്നു. അതു എത്രനിലയിൽ ഇരിക്കുന്നു എന്നു അറിഞ്ഞാൽ കൊള്ളാം.

മി. സ്പീക്കർ: അതിനെപ്പറ്റി വേണ്ട നടപടികൾ നടത്തുന്നുണ്ട്. നടപടികൾ എന്തെല്ലാമാണെന്ന് ഇപ്പോൾ പറയുവാൻ സാധ്യമല്ല.

LEGISLATIVE BUSINESS

Chief Minister **[Sri. T. K. Narayana Pillai]:** Sir, with your permission I suggest that we may proceed with the legislative business now.

Mr. Speaker: The suggestion is that the Second Reading and further stages of the Prevention of Corruption Bill may be taken up first before the other items in the agenda are taken up.

There is an adjournment motion before the House. Has the Hon'ble Minister received information about the motion?

Sri. T. K. Narayana Pillai: Yes, Sir.

Mr. Speaker: So, I take it that the House has no objection to proceed with the Prevention of Corruption Bill before we take up the adjournment motion. I hope this arrangement is acceptable to the House.—First the consideration of the Bill, then the adjournment motion and lastly, election to the Committee.

Prevention of Corruption Bill—*(cont.)*

Mr. Speaker: We will now go on with the Second reading of the Prevention of Corruption Bill. The last amendment (No. 52) has not been moved. The Hon'ble Sri. T. K. Narayana Pillai will move amendment No. 52 in the list.

Sri. T. K. Narayana Pillai: I move that Clause 14 may be deleted. It has become unnecessary as the period of the Ordinance has already expired and there is no necessity for the retention of the Clause. So, I move that the whole Clause may be deleted.

Minister for Finance and Revenue **[Sri. A. J. John]:** I second the motion.

The amendment was put and carried.

The Clause was deleted.

Sri. T. K. Narayana Pillai: Sir, I move amendment No. 1 in the list as two separate amendments.

In sub-clause (1) of clause 1, for the words "United State of Travancore and Cochin" substitute the word "Travancore-Cochin".

I also move that:—In the title of the words "United State of Travancore and Cochin" substitute the word "Travancore-Cochin".

Sri. A. J. John: I second the motions.

The amendment were put and carried.

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Mr. Speaker: In respect of Clause 1, there are some more matters to be looked into before clause 1 is voted upon.

Sri. T. K. Narayana Pillai: Sir, I move the following amendments also to clause 1.

(1) 'In sub-clause (1) of clause 1, in line 2, delete word 'of' occurring between the word 'Act' and the figures '1950".

(2) "In sub-clause (2) of clause 1 for the words 'and it applies also to all subjects and servants of the Government of the State of Travancore-Cochin in or outside the State' substitute the word 'it applies also to the citizens of State and to all public servants in or outside the State".

Sri. A. Thanu Pillai: So, 'in or outside' will also apply to all citizens?

Sri. T. K. Narayana Pillai: No.

Sri. A. Thanu Pillai: The only point for consideration is whether we can legislate for even Travancore-Cochin citizens who are outside the State and also whether we can legislate for our own servants outside the State. This is after all, a penal law. I have not myself examined the matter, but I put it for the consideration of the House whether we can legislate for the citizens of the State when they are outside and whether we can also legislate even for the servants of the State when they are outside, I mean not outside India. Then, of course, it is a matter of international law and central legislation. But the question is as regards the conduct of citizens and servants of Travancore-Cochin outside the State. Even in regard to the servants outside, I am asking whether their conduct should be guided by this. My only anxiety is that we should not legislate wrongly. I must admit that I have not examined the matter. As regards the penal law, my feeling as regards the conduct of citizens when they are outside Travancore-Cochin is that the Indian law is applicable. There have been a number of cases relating to conduct of postal employees. Such cases were tried according to our law here and not according to the Indian Law then in existence. Then, such rights as we enjoy in reepect of our citizens outside Travancore formerly, even those rights must be deemed to have ceased. Has the Chief Minister anything to say on this?

Sri. P. T. Chacko: There is another difficulty on which I would like to have elucidation from the Minister in charge. Here, it is stated that the Bill will apply to citizens of the State. I understand that there is no citizenship for the Travancore-Cochin State. The citizenship is for India. Will it be proper that we legislate for 'citizens of the State'?

Mr. Speaker: It is stated that " It also applies to citizens in the State ".

Sri. P. T. Chacko: That is exactly my difficulty—whether the Act applies to citizens of India whether in the State or only to subjects of this State?

Sri. T. K. Narayana Pillai: Regarding the first point, even as the law now stands, I think any citizen of this Government who commits an offence outside the jurisdiction of this State can be tried in this State. And I do not think there is anything opposed to the principle of legislation.

That is in regard to the first point that is raised. Not only that, even in the Indian Prevention of Corruption Act there is a provision that it applies also to all British subjects and servants of the Crown in any part of India and to British subjects who are domiciled in any part of India wherever they may be. This was passed in 1947 and they wanted that all officers who committed any offence under the Act in any place within the territory should also be proceeded against, under the provisions of the Prevention of Corruption Act. So, I don't see anything opposed to the inclusion of this in this legislation.

The second point is in regard to the wording used: 'citizens in the State'. There is some difference between 'the citizens of the State' and 'the citizens in the State'. As soon as the Constitution came into force, the subjects of the State automatically became citizens of India. I am prepared to concede that. But as long as he is a servant of this Government, it is open to the Government to proceed against him in these cases.

Sri. A. Thanu Pillai: It is enough if we merely say: 'It extends to the whole of the State of Travancore-Cochin'. No reference need be made to 'citizens'. It is not necessary. The law extends to the whole of Travancore-Cochin, whether he be a citizen of Travancore or not, and it will be possible to proceed against him.

Sri. T. K. Narayana Pillai: That is what is meant here also. It applies also to citizens in the State and all public servants in or outside the State; 'citizens in the State' means people

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who are actually residing here. I know the fundamental proposition, that there is only Indian citizenship and that there is no citizenship peculiar to Travancore-Cochin. That is why the words 'in the State' are used.

Sri. A. P. Udayabhanu: By this it applies to the citizens in the State. Does it not apply to aliens in the State?

Sri. T. K. Narayana Pillai: No. If he is a citizen and if he can be considered to be a citizen in the State, then, certainly, the law will apply to him.

Sri. A. P. Udayabhanu: It is stated that this will apply to the citizens in the State. 'Citizen' means citizens of India as defined in the Constitution of India. Will it be said that it will apply to the citizen in the State and will not apply to an alien in the State? Suppose a citizen of Pakistan who is in Travancore commits an offence under this; will it not apply to him? Is it not enough that we leave it without saying that it will apply to the citizens in the State?

Sri. T. K. Narayana Pillai: That is a doubtful proposition which has been enunciated. That will certainly depend upon the interpretation of the word 'citizen'. This will apply to any citizen in the State, as per the definition of the word 'citizen' contained in the Constitution of India. It will not certainly include aliens as at present. I don't think there is any point in continuing discussion on this question. The question is whether this will apply to aliens. Aliens do not come under the category of citizens and as the category of citizens has been well defined in the Indian Constitution, the difficulty suggested by my friend does not arise.

Sri. A. P. Udayabhanu: My position is this. It is specifically stated that this legislation will apply to the citizens in the State. Suppose an alien—a citizen of Pakistan—lives in this State and commits an offence under this Act. Will he not be liable to be prosecuted under this law, since he is within the State? That is my doubt.

Sri. D. Gnanasigamoni: Sir, I have got to say a few words on this. This is intended only to apply to those persons coming under Sections 153 and 157 of the Penal Code. So no such difficulty will arise. This is meant only to apply to those who are in service. The procedure in respect of this matter is clearly laid down in the Criminal Procedure Code.

In this connection, I would like to draw the attention of the House to the wording used in the Indian Act: 'It applies also to all British subjects and servants of the Crown in any part of India.....wherever they may be." Suppose an officer commits an offence under this Act and escapes from the State. Then, under this provision, it will not be possible to bring him before a Court here. No doubt, there is the Extradition Act by which he can be brought over here for an offence committed here. But, a person may commit an offence here and he may escape into British India. He also must be brought within the Act. To proceed against him, I think, this is absolutely necessary. The Clause as it now stands makes this impossible.

Sri. A. Thanu Pillai: This is a fit matter for the Advocate-General to enlighten the House with his remarks. But, at the same time, I don't want to take him by surprise.

Mr. Speaker: The doubt raised by the Hon'ble Members is in regard to the first part of the amendment. In regard to the second portion of the amendment, there is no difficulty. It is intended to apply to all servants of the Government of Travancore-Cochin whether they be inside or outside the State.

The matter may be referred to the Advocate-General for his remarks. The Advocate-General may offer his remarks now or a little later in the course of the day if he wants time to look up all the relevant details.

Sri. T. K. Narayana Pillai: The Advocate-General is prepared to elucidate the matter now.

The Advocate-General: Sir, with regard to the doubt that was raised, I would like to refer to the Acts and Proclamations, Volume X. I am reading clause 2 at page 527 of the Acts and Proclamations of Travancore (Volume X). Clause 2 reads:

Sri. A. Thanu Pillai: May I know to which Proclamation the learned Advocate-General is referring?

The Advocate-General: I am referring to "The Travancore Criminal Law (Amendment) Regulation, X of 1114.

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[Advocate-General]

"Offences committed outside Travancore" Any subject of Ours, committing in any place without and beyond Our territory, an offence punishable under any law for the time being in force in Our territory shall be deemed to have committed such offence within Our territory and may be dealt with in respect of such offence as if it had been committed in any place within our territory at which he may be found.."

I will just start with a quotation from Oppenheim's 'International Law', which would clear the position considerably. I am referring to Volume I of Oppenheim's 'International Law'. In regard to the rights of nationals and others, the learned author has summarised the position thus:

"For the inhabitants, protection of life and liberty or the free exercise of religion without distinction of birth, nationality, language, race, or religion."

"In general, for certain inhabitants automatic acquisition, or just facilities for the acquisition, of the nationality of the contracting State;"

"For the nationals, equality before the law and as to all civil and political rights, and as to the use of any language."

I am reading from page 652-653 of the Volume. So far as rights of nationals and other inhabitants and citizens are concerned, the matter comes under three distinct heads. Supposing an offence is committed by a foreigner who comes into the State. So far as Criminal Jurisprudence is concerned, the foreigner is subject to the laws of the State where the offence is committed.

So far as the point that is taken up by the learned member Mr. A. P. Udayabhanu is concerned, there is a complete answer to that in Articles 7 and 9 of the Constitution Act. Articles 7 reads:

"Notwithstanding anything contained in Articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (*b*) of article 6 be deemed to have migrated to the territory of India after the nineteenth day of July 1948".

And clause 9 says:

"No person shall be a citizen of India by virtue of article 5, or deemed to be a citizen of India by virtue of article 6 or article 8, if he has voluntarily acquired the citizenship of any foreign State".

So, the idea of the law affecting a Pakistan citizen or the idea of the law affecting a foreign subject really will not arise. That is my submission.

Sri. P. T. Chacko: There is no mention made of a citizen of India in the amendment.

The Advocate-General: The word 'citizen' has been defined in the Constitution. There is only one kind of citizenship after the 26th January 1950 for the whole of India, and that has been defined in clause 5:

"At the commencement of this Constitution, every person who has his domicile in the territory of India and

(*a*) who has born in the territory of India; or

(*b*) either of whose parents was born in the territory of India; or

(*c*) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement,

shall be a citizen of India".

The term 'territory of India' has also been defined in Article 1. So, wherever the word citizen' occurs in the law, it is only that type of citizenship that is envisaged, and that is the citizenship of India. So that it appears to me that when the Legislature uses the word 'citizen', obviously it refers to a citizen of India; and the place where the offence is commited is normally taken as the place having jurisdiction to take cognisance of the criminal act—the court having

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jurisdiction over the subject matter. The offence has to be tried in the place where it is committed and in cases in which a person having committed an offence absconds or goes out of the jurisdiction or territory of a court, then there are laws under which the man can be apprehended and allowed to stand before the Court exercising jurisdiction in regard to the subject-matter. That is as I conceive it, Sir, the position.

Sri. A. Thanu Pillai: May I know the Advocate-General's opinion if I am permitted to ask him—in regard to this: Suppose a Travancore-Cochin subject commits an offence under this when he is in Madras. Can he be prosecuted for that offence in Travancore-Cochin? What is the Advocate-General's opinion? That is to say, suppose a person from Trivandrum is in Madras and he bribes a Travancore official or a Travancore official takes bribes while in Madras. Can he be tried in Travancore-Cochin?

The Advocate-General: He could be tried since the law applies to all subjects and servants of the Government of Travancore-Cochin, in or outside the State.

Sri. A. Thanu Pillai: I wish to know whether after the coming into force of the Constitution, we have got the power to legislate in that matter.

The Advocate-General: The answer to that is, that it is definitely so. Suppose an offence is committed elsewhere by a person who is normally subject to the laws of this country. He can be tried only here and not elsewhere. Now there are two categories of cases in law; one, State subjects who commit offences either in or outside the State, and the other, citizens or State subjects who are not normally resident in the State who commits an offence inside the State. Both of these come within the jurisdiction of the State courts.

Sri. A. Thanu Pillai: My question is: Can the Travancore-Cochin criminal court have jurisdiction over offences committed outside the Travancore-Cochin State?

The Advocate-General: If an offence is committed by a subject and if he could not be apprehended inside the State, so long as he remains outside, the court here will have no jurisdiction. But this court can apprehend him and try him at the moment he enters the State. The law clutches at him as soon as he enters the State. Whether the offence be committed outside or inside, the court will have jurisdiction over the personnel of the offence.

Sri. A. P. Udayabhanu: The Advocate-General was saying that the peron should be tried within the jurisdiction where he commits the offence. So, if I myself go to Madras and commit an offence under this Act, can the court in the State try me? Under the Constitution, there is no jurisdiction for the state over a person who has committed an offence elsewhere, because he is a resident in the State. There is no personal loyalty for a citizen to the State. So this State cannot hand up a person before a court in Travancore, if he commits an offence without the State. The only court competent to do so is the court within the jurisdiction of which the offence is committed. That court alone can try the offender so how can the Act provide for extra territorial jurisdiction? That is the point which I would like the Advocate-General to clarify.

It is stated that this will apply to citizens in the State whether the offcence is committed within the State or without the State. Is it not without its jurisdiction? Can this State hand up a person before a court within the State, for the offence committed by him elsewhere? In this context, I may refer my friend to Article 245 of the Constitution, in which it is stated that Parliament has got the right to legislate on matters having extraterritorial operation. Does it not mean that any Act passed by this Legislature with extraterritional jurisdiction will be deemed invalid? I am referring to Article 245 clause (2). Will not this bill be invalid because it has extra-territorial jurisdiction?

My friend was quoting from the Penal Code, But in that context, I may remind him that the old Penal Code was enacted when this State was an independent State. The State had got its own subjects; the people inhabiting the State were subjects of His Highness the Maharaja and it was the duty of His Highness the Maharaja to protect his subject if he is outside the State. Therefore even if a subject of the State committs an offence outside the State because of his personal loyalty or allegiance he was within the jurisdiction of His Highness the Maharaja. But today the situatiou is different. There only one citizenship for the whole of India. That being so, the Penal Code cannot be cited. When the State was independent, having citizenship of its own, it would naturally claim jurisdiction on its subjects when they commit an office outside the State. But now that is not the situation. This matter has to be kept in his mind when he gives an explanation.

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Sri. A. Thanu Pillai: I may also bring to the notice of the Advocate-General, Article 245 of the Constitution. Now we are bound by the Constitution and Article 245 of the Constitution says;

"Subject to the provisions of the Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State."

That is the substantial provision of the Constitution, under which we have power to enact laws. Clause (2) of that Article says:

"No law made by Parliament shall be deemed to be invalid on the ground that it would have extraterritorial operation."

Certainly as an independent State, the Central Legislature must have powers to legislate even in matters of extraterritorial jurisdiction. But then, so far as these Legislatures like the Travancore-Cochin Legislature are concerned, we can legislate for the State concerned only. But now when it is stated that the Legislature of a State may make laws for the whole or any part of the State, does it cover also power to legislate on behalf of people normally resident in the State but who commit an offence outside the State? The Central Legislature can Legislate for the whole of India and can also exercise powers of extraterritorial jurisdiction. This is the a provision which binds us.

Then, how can we proceed against a Travancore citizen who is outside the Travancor-Cochin State? Normally, in known principles of law, anybody in Travancore-Cochin-probably subject to the necessary exemptions-will be subject to our laws. There is no doubt about it. Beyond that, whether we can legislate for any action that may be done outside Travanncore-Cochin is doubtful. My view is that we cannot. We can only say that this will apply to the whole of Travancore-Cochin and we must take it subject to its limitations. Of coure, there may be administrative rules and procedures for proceeding against those outside the State. So far as the Penal law is concerned, we are bound by the provision in the Constitution. And our powers are circumscribed by this. What we did before the integration and the Indian Constitution came into force—even those things—cannot be applicable now. Because, then to a large extent we were legally and constitutionally an independent State, subject to our obligations under the treaty. Even that has gone. Now we are bound by the Constitution and Article 245 limits our power.

The Advocate-General: It appears to me, Sir, that the position is clear. I am not certainly contending for the position that a public servant inside the Travancore-Cochin state who commits an offence outside, by that fact alone, will be subject to the jurisdiction of the Court here. The way in which the matter has got to be looked into is this: That is, an offence committed against a State by a public servant will not be an offence against the foreign law in which place he is for the moment. It is only an offence against this State. I want to draw the attention of the House to this fact namely that there are two categories of persons who are sought to be brought within the ambit of the statute. The first is a public servant of the State. The point has been raised as to whether, when public servants inside the State who commits an offence outside the State and action is taken, that will not be something over which the Travancore-Cochin State has no jurisdiction to do. In other words, the point as I understand, that has been raised is this: A public servant in Travancore-Cochin State who commits an offence against this State in a place that is outside the jurisdiction of the State—whether he can be tried under the law in Travancore-Cochin. That, it appears to me, is the point that has been raised. The other point that has been taken is in regard to the citizens of India who come in here and commit an offence. So far as the second point is concerned, the position is easy, for. the reason that the offence has been committed in a place within the jurisdiction of the State Whoever commits that offence, by virtue of the fact that he is resident in that place, it is perfectly open to the courts in this State to take cognizance of that matter, on account of the fact that the occurrance ofthe offence is within the Travancore-Cochin State. The other position, namely, as to whether public servants in the State who goes outside and commits an offence elsewhere, whether they may be made liable to appear before a Court of the State under the provisions of this statute, is the point raised by Hon'ble Mr. Pattam Thanu Pillai. My answer to that is simple. The way in which that man can be apprehended and brought to book is a matter of procedure. The principle of law is that if a public servant in Travancore-Cochin State commits an offence against this State and he escapes or if that offence was committed outside the territorial limits of the State, the law must certainly provide that a public servant

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of this State who violates the law of the State, where-ever the offence be committed, is liable to punishment. The question as to the way in which that man can be apprehended and the method prescribed for getting at him or trying him is an entirely different matter. It is a matter of proceedure.

In this connection, I may, by way of illustration just refer to the explanation II to Section 15 of the Penal Code, where the point has been made clear:

> "I have added an explanation to Section 21 of (Indian Code) so as to include certain classes of the servants of Her Majesty the Queen-Empress of India in the definition of Public Servants. In Travancore, there are many servants of the British Government on duty in connection with the Imperial Posts and Telegraphs Offices, Subsidiary Force at Quilon and the Residency. The late Cash keeper of the Residency Treasury was at the instance of the Madras Government tried by our court for criminial breach of trust under Section 408 of the Penal Code, on account of the doubt felt as to whether a charge under Section 409 of the Code will stand against one who was not a public servant of this State.....

Similar cases may arise in future. It is necessary that *when British Servants are, at the instance of their Governnent*, brought for trial before our Courts, for offences committed in their officiel capacity, they should be treated as "public servants" in the same way as they would be treated in British India. There are also offences which the subjects of this State may commit against British servants. I need hardly say that offences committed against public servants are greater than those of the same classes committed against ordinary persons. We have also offences which could be committed only against public servants, such as bribery. A subject of this State who offers a bribe to a British Officer in Travancore, would escape punishment, if such officer is not a public servant according to our law. To avoid this contingency and to meet the other objects above hinted, a new explanation is added to Section 21, to the effect that British servants *who may be handed over for trial by our Courts or against whom* any offence may be committed *by the subjects of this State in Travancore*, are public servants for purposes of the Code. It will be observed that this addition in no way interferes with the existing privileges, rights and jurisdiction and that its sole object is to enable our Courts to deal satisfactorily with the cases coming before them in *due* course."

Sri. A. Thanu Pillai: Does it not mean that the local law should apply? The whole thing that the Advocate-General read goes to show that the local law should apply? If you commit an offence outside, say, in Madras, the law there must apply. Therefore, there is no meaning in our saying that this applies to those outside the State.

The Advocate-General: The question is whether we should exempt from the operation of the State law, a public servant in Travancore, who commits the offence outside the State on the simple ground that he committed the offence outside. The charge is offence against the State. The public servant must behave as a public servant. That is an offence under the municipal law in Travancore. The question is merely because that offence was committed in a place outside the jurisdiction of the State, we ought to exempt that type of offender from the ambit of this law. It appears to me that both principle and policy require that kind of jurisdiction particularly because does not impinge upon the extra-territorial jurisdiction as was contended on the other side—it is not a case of a extra-territorial jurisdiction at all. In following up a fugitive offender in respect of an offence that has been committed in the State, the state is not really transgressing upon the limits of the larger jurisdiction which has been conferred on the Centre. This is merely an offence under the municipal law. Supposing that person is sought to be tried in Madras, for example, that court will decline to exercise jurisdiction because it is not an offence against their law, so that the only court which can take cognizance of this matter is a court under whose jurisdiction or against whose laws the transgressor has committed an offence. If that is an offence in law, the way in which we can apprehend him and bring him to book and take him to the court is a matter of detail and of procedure with which the law laying down the offence is not primarily concerned. That is the answer which I can give.

Mr. Speaker: As the clause stands, it is clear that we are not legislating except in respect of matters falling within the State. I don't think there is any provision in the clause to the effect that it will apply to any place outside Travancore-Cochin. There is therefore nothing to suggest that this will be in conflict with the provisions of the Article 245 of the Constitution. The article says: "Subject to the provisions of this Constitution, Parliament

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may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State." This law is meant to extend only to the whole of Travancore-Cochin. The dispute is only in respect of the practical working of some of its provisions.

Sri. P. T. Chacko : My point was different. As the Advocate-General said, any penal law which we enact will apply to all citizens in the State and also to other people who are in the State but are not citizens of India. Here, it applies also to citizens in the State. That is the amendment. My suggestion was whether this word "citizens" should be used in this amendment; and a discrimination between citizens of India and foreigners in the State should be made. Any penal law which we enact should apply naturally to citizens of India in the State and also to other people who are not citizens in the State. So, I was suggesting whether this word "citizens" should be retained in this amendment, because, it should naturally apply not only to citizens of India but also to other people in the State. To any person within Travancore-Cochin, this law should apply. Why there be a discrimination made between a foreigner in the State and a citizen of India? So. I was suggesting that this word "citizens" need not be retained in this amendment, because it should apply equally to citizens of India and also to foreigners.

Mr. Speaker : Does the Advocate-General take the position that this will apply only to citizens but not to foreigners who, without becoming citizens, may be temporarily residing here.

The Advocate-General : If I might submit, Sir, a foreigner who is an employee of the Travancore-Cochin State ceases to be foreigner. It is a short answer to the question.

Mr. Speaker : What about a foreigner who is not an employee but is residing here?

The Advocate-General : So far as the question of corruption is concerned, a case is envisaged in which a foreigner comes over here and atempts to corrupt a public servant Because he is here, he is subject to the law of the State. He need not become a citizen. All classes of people are mentioned definitely. The law extends to the whole of the State and to a foreigner who comes here and attempts to corrupt the public servant as the case may be, Because he is resident inside the State, the law will apply to him also.

Mr. Speaker : So it is not citizenship but residence that is made the criterion.

Sri. P. T. Chacko : The Advocate-General is in perfect agreement with my suggestion. He says that it should extend to foreigners here. So, I suggest that the word "citizens" may not be retained in the amendment.

The Advocate-General : I do not contend at all.

Sri. Eapen Arackkal : Whether a law enacted will not apply to all the persons within the territory of the State for which the law stands is a question to be considered. In what way can it be said that even if he is not a citizen as defined in the Bill, when he enters the State.....

Mr. Speaker : The position is clear enough. The question is about the retention of the word "citezen".

Sri. P. Balakrishnan Tampi : This seems to be a very intriguing question. Therefore any amount of assertiveness or pontifical utterances from either the Government Benches or even from the Advocate-General is not going to solve the problem. It is very clear that it is a highly doubtful thing. Therefore, I would suggest that it is better that this legislation itself be enacted by the Centre. If that is not possible, it would be better to have the benefit of consulting high constitutional authorities available with the Government of India before enacting this measure. because, when we have so much difficulty here, what would be the condition in the High Court and what would be the plight of the citizen especially with regard to litigation, etc.? It is very clear that any amount of superficial references to Savarkar's case or extra-territorial jurisdiction is not going to shed any light on a problem which has cropped on after the republic has been formed. Therefore, I would suggest that consideration oi this measure be deferred to the next session of the Legeislature, when we can have the benefit of the advise of the highest constitutional authoritity on this matter.

The Advocate-General : May I suggest that the more comprehensive term "persons" instead of "citizens" will resolve all difficulty?

LIBRARY ARCHIVES Kerala Legislative Assembly

Mr. Speaker: The term "persons" may probably fit in better than "citizens".

The Advocate-General: "And to all public servants in or outside" may be retained.

Sri. A. Thanu Pillai: When we say it applies to all persons in the State, that is exactly what is meant by saying that it extends to the whole of the State of Travancore-Cochin. The effect of that statement is that it applies to all persons in the State. Of course, subject to certain international considerations which we do not take into account when we legislate, it extends to the whole of the Travancore-Cochin State. It means that it applies to all persons in Travancore-Cochin. Therefore it is that I say that we can very well be content with this. It extends to the whole of the State. We need not say anything more.

My next contention is that we cannot legislate in such a way that our legislation will affect penally the conduct of public servants outside the State. The desired result has to be secured by administrative rules and administrative procedure, which will govern public servants. Under article 245 of the Constitution, we can legislate only for our State. We must be content with the words that 'It extends to the whole of Travancore-Cochin'. I agree that it need be stated, that it applies specifically to all persons in the State. The only remaining point therefore is whether it can be made applicable to all public servants outside the State. Personally, I am against including this, because it will be entrenching upon the jurisdiction outside the State.

Sri. T. K. Narayana Pillai: That amendment can be accepted. That was how the original draft was prepared. It was at the suggestion of my learned friend Sri. Thanu Pillai, this amendment was put in.

Sri. A. Thanu Pillai: What the Chief Minister says is certainly a mistake. I never wanted such a thing.

Mr. Speaker: I think with the amendment as finally suggested the clause will read as follows: "It applies to the whole of the State of Travancore-Cochin and to all public servants in or outside the State."

Sri. Eapen Arakkal: When it is stated that 'it applies to the citizens of the United State', it means that those citizens who go outside the State are also included. That is more or less a personal legislation. When a citizen goes to Madras or Delhi, he naturally comes within the purview of the Act because he is a citizen of the State. It is personal jurisdiction that is contemplated so that it must be an offence against the law of the State. If a citizen of Travancore-Cochin goes to Delhi and commits an offence against the provisions of the Act in the State, the jurisdiction rests with the State for taking him to task. Supposing a person from here and a public servant go outside theState and commit an offence under the Act, the law must give power to bring both of them to the book, Otherwise if any person goes outside the State and commits an offence against the enactment or statute in force in the State, he will not be liable for prosecution here. It may be stated that he must be subject to the operation of the law there. Therefore the term 'citizen' in the State has to be interpreted as empowering the exercise of personal jurisciction when he is outside the State.

Mr. Speaker: The amendment as suggested by the Minister in charge which reads "it applies to all subjects of the State" etc. has to be retained, in the opinion of Sri. Arakkal. Otherwise the member fears that a subject of the State who is not a Public Officer to committing an offence outside the State could not be proceeded against.

Sri. A. Thanu Pillai: I wish to point out that the discussion arose whether an offence committed outside the State by a citizen could be brought within the scope of this Bill. Personally I think that we have no power so far as offences committed by a person or officer outside the State. So I think it would be better we content ourselves with the expression that 'it extends to the whole of the State of Travancore Cochin'.

Mr. Speaker: I think the matter has to be more carefully looked into. We may take up this question again at 2 p. m.

ADJOURNMENT MOTIONS

Mr. Speaker: There is an adjournment motion of which notice has been received. Before we decide whether it should be admitted or not I would ask the Hon'ble Minister concerned to enlighten the House in respect of the main facts involved in the motion. The motion is for adjourning the business of the House or discussing a definite matter of urgent public importance, namely the price fixed by the Government of India for rice from Uttara Pradesh, from where large quantities have been allotted to this State and the grave financial disequilibrium that will be

LIBRARY ARCHIVES Kerala Legislative Assembly

[Sri. T. K. Narayana Pillai]

ധാന്യങ്ങളെസംബന്ധിച്ച് നമുക്കുണ്ടാകുന്നതായ നഷ്ടത്തിന്റെ പരിഹാരത്തിനായി വാശ്ത്തംചെയ്തിട്ടുള്ള ൭ ൫ ശതമാനം സബ്സിഡി എങ്കിലും നമുക്ക തരണമെന്നുള്ള ഒരു വാദവും ഞങ്ങൾ ഉന്നയിച്ചിട്ടുണ്ട്. അതിനെസംബന്ധിച്ച് കൂടുതൽ ശക്തിയായി വാദിക്കാനും ഞങ്ങൾ ഉദ്ദേശിക്കുന്നുണ്ട്.

ഒരു സംഗതിയിലേക്ക കൂടി ബഹുമാനപ്പെട്ട അംഗങ്ങളുടെ ശ്രദ്ധവിഷയിപ്പിക്കുവാൻ ഞാൻ ആഗ്രഹിക്കുന്നു. ഇതേസംഗതിതന്നെ പാർലമെന്റിലും ഉന്നയിക്കയുണ്ടായിട്ടുണ്ട്. ഇപ്പോൾ ഭക്ഷ്യമന്ത്രി ശ്രീ. ദേശായ്ജി പറയുകയുണ്ടായി വിദേശങ്ങളിൽനിന്നും ക്ഷ്യധാന്യങ്ങൾ ഇറക്കുമതിചെയ്യുന്നതിന് ഫിനാൻസു മിനിസ്ട്രിയുടെ അനുവാദമുണ്ടെങ്കിൽ ഫുഡ്മിനിസ്ട്രിക്ക് യാതൊരുവിരോധവുമില്ലെന്ന്. എന്നാൽ അതോടുകൂടി നമുക്ക തന്നുകൊണ്ടിരിക്കുന്ന ബോണസ്സ് സംഖ്യ ഇനിമേൽ തരാൻ സാദ്ധ്യമല്ലെന്നും അദ്ദേഹം പറയുകയുണ്ടായി. ബോണസുതരുന്നത് ചില പ്രത്യേക ഉദ്ദേശങ്ങളോടുകൂടിയാണ്. ഈ രാജ്യത്ത് സ്വയംപര്യാപ്തത കൈവരുത്തുന്നതിനവേണ്ടിയും, കൃഷി വികസിപ്പിക്കുന്നതിനവേണ്ടിയും കൂടുതൽ ജലസേചനപദ്ധതികൾ ഉണ്ടാക്കുന്നതിനവേണ്ടിയും ആണ് ബോണസ് തരുന്നത്. അങ്ങിനെ ചില നിശ്ചിത ഉദ്ദേശങ്ങളോടുകൂടി തരുന്നതായ ബോണസ്സ് ഈ ഇനത്തിൽ തട്ടിക്കഴിക്കാമെന്നു് ഇൻഡ്യാഗവൺമെന്റോ ശ്രീ. ദേശായ്ജിയോ വിചാരിച്ചിട്ടുണ്ടെങ്കിൽ അതു മറ്റു പ്രവിശ്യകളോടും, നാട്ടുരാജ്യങ്ങളോടും ചെയ്യുന്ന ഒരനീതിയാണ്, അധർമ്മമാണ് എന്നു പറയുവാൻ ഞാൻ ഒട്ടും മടിക്കുന്നില്ല. ഏറ്റവും ദൗർഭാഗ്യമേറിയ ഈ സംഗതിയിൽ ബഹുമാനപ്പെട്ട അംഗങ്ങളുടെ എല്ലാവരുടേയും സഹകരണമുണ്ടെന്നു് കാണുന്നതു് വളരെ സന്തോഷപ്രദമായ ഒരു കാര്യമാണ്. ഈ സംഗതിയെ സംബന്ധിച്ച് ഗവൺമെണ്ടു് ഒരു ഉറച്ച നില എടുത്തിട്ടുണ്ടെന്നും അതിനെതുടർന്നു് വേണ്ട മറ്റു സകല ഏർപ്പാടുകളും ചെയ്യുന്നതിനു് ഈ ഗവൺമെണ്ടു് സന്നദ്ധമാണെന്നും ബഹുമാനപ്പെട്ട അംഗങ്ങളെ അറിയിക്കുവാൻ ഞാൻ ആഗ്രഹിക്കുന്നു.

The adjournment motion was put and carried unanimously.

Prevention of Corruption Bill *(cont.)*

Clause 1 (cont.)

M. Speaker: We were at the amendment to clause 1, sub-clause (2). The Advocate-General will explain it further.

The Advocate-General: Sir, I want to bring to the notice of the House entry No. 41 in the State List and entry No. 1 in the Concurrent List. Entry No. 41 in the State List reads thus:

"State Public Service; State Public Service Commission." Entry No. 1 in the Concurrent List reads:

"Criminal Law, including all matters included in the Indian Penal Code at the commencement of this Constitution, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces....".

Reading entry No. 41 in the State List and entry No. 1 in the Concurrent List it is abundantly clear that the Centre has no right to touch by legislation anything relating to the Criminal laws relating to the State public service. So that, the Centre has no right to legislate on this matter. The only Legislature that can function with respect to the item of criminal law bearing upon State public service, is the State itself. And therefore, any legislation on this matter is not a legislation that can legitimately or reasonably be undertaken by the Centre. That is one thing.

I might also mention one passage where the law in this matter has been very clearly stated. I am quoting a passage from 'Maxwell on the Interpretation of Statutes', Chapter VI.

"Primarily, the legislation of a country is territorial. The general rule is, that extra territorium jus dicenti impune non paretur. The laws of a nation apply to all its subjects and to all things and acts within its territories, including in this expression not only its ports and waters which form, in England, part of the adjacent country, but its ships whether armed or unarmed, and the ships of its subjects on the high seas or in foreign tidal waters, and foreign private ships within its ports. They apply also to all foreigners within its territories (not privileged

LIBRARY ARCHIVES Kerala Legislative Assembly

like Sovereigns and ambassadors) as regards criminal, police and, indeed, all other matters except some questions of personal statusor capacity in which, by the comity of nations, the law of their own country or the lex loci actus or contractus, applies."

That is the position. So far as the criminal law is concerned, the laws of the nation apply to all its subjects, persons resident there and also to foreigners within the territory. That is the law.

Sri. P. T. Chacko: May I know, whether the Advocate-General holds that Travancore-Cochin is a nation?

The Advocate-General: I never contended for the position. It does not arise and it appears to me that it is irrelevant.

Then, I might also bring to the notice of the House another passage, the English law on this matter is clear from that passage. I am referring to page 451 of Chalmers and Hood Phillips 'Constitutional Law':

"If a British subject commits certain crimes in foreign territory, he may by statute be tried and punished for them on his return to England, although, in many cases also, he may be tried and punished in the country where he committed the crime."

There is also a statute of Parliament bearing upon this matter. I am taking out one passage from "The Complete Statutes of England classified and annotated in continuation of Halsbury's Laws of England", Volume IV:

"From and after the passing of this Act, if any person who now is, or heretofore has been, or shall hereafter be employed by or in the service of His Majesty, his heirs or successors, in any civil or military station, office, or capacity out of Great Britain, or shall heretofore have had, held, or exercised, or now has, holds, or exercises, or shall hereafter have, hold, or exercise any public station, office, capacity, or employment, out of Great Britain, shall have committed, or shall commit, or shall have heretofore been, or is, or shall hereafter be guilty of any crime, misdemeanour, or offence, in the execution or under colour or in the exercise or any such station, office, capacity or employment as aforesaid, every such crime, offence or misdemeanour may be prosecuted or enquired of, and heard and determined in His Majesty's Court of King's Bench here in England....".

That is the passage. Why I referred to all these is to enlighten the House as to how the law will apply so far as a public servant of a State is concerned, who commits an offence against the State laws at a time when he was out side the State.

If my reading of item 41 of the State List and item 1 of the Concurrent list is correct, this is a matter about which the Centre has no right to legislate. The only body competent to legislate upon that matter is the State. And what has now been attempted is to legislate upon the misdemeanour of a public servant by virtue of his holding office as a public servant, wherever it might have been committed; whether the offence is committed inside the State or outside the State, of course the law clutches at it if the offence is under colour of the office held by him. Because that will not be an offence under a foreign law or even under any other Municipal law.—I am not quite right in saying 'foreign law', it may be 'municipal law' or 'provincial law'. Therefore, it is necessary, because the Centre has no right to legislate upon this matter. It is exclusively a State subject and though there is no doubt that the State Legislature is in some sense subordinate to the Central Legislature, this Legislature can pass a law on this subject under the Constitution. It must be taken that the State Legislature has got absolute sovereign powers of legislating upon the matters that have been allowed to it by the Schedule of the Constitution. The word 'nation' has raised the analogy of English law and the analogy of the law elsewhere as relevant in this limited sense. Now that powers of legislation have been to the State, and when the State legislates upon a particular matter that legislation is neither subsidiary or subordinate. It is sovereign legislation within the ambit of the particular limitations. That is why I submit that it is perfectly open—it is even legal and necessary—that the legislation should affect not merely persons inside the State, but also such persons who, by virtue of the office that they hold, commit an offence. Whether it be committed inside the State or outside, it will be an offence, The modus operandi of how he may be got at I submit is a matter of procedure on which perhaps further investigation will have to be conducted.

Mr. Speaker: The amendments now before the House are:

1. In sub-clause (1) of clause 1, in line 2, delete the word "of" occurring between the word "Act" and the figures "1950".

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. Speaker]

2. In sub-clause (2) of clause 1 for the words "and it applies also to all subjects and servants of the Government of the State of Travancore-Cochin in or outside the State" substitute the words "it extends to the whole of the State of Travancore-Cochin and it applies also to the public servants in or outside the State".

The amendments were put and carried.

The question that clause 1 as amended stand part of the Bill was put and carried.

The Clause as amended was added to the Bill.

The question that the Preamble stand part of the Bill was put and carried.

The Preamble was added to the Bill.

The question that the Title stand part of the Bill was put and carried.

The Title was added to the Bill.

Sri. T. K. Narayana Pillai: I move that the Bill, as amended, be passed.

Sri. A. J. John: I second the motion.

Sri. A. Thanu Pillai: Sir, I object to it. I object to the motion that the Bill be passed and not to the motion that it be passed immediately.

Sir, I shall briefly explain the reasons why I object the Bill. This Bill will be a dead letter from the moment it is passed and it will continue to be a dead-letter all the time that it remains in the statute book. The Ordinance was in force for six months. That was issued in 1124 and even though it expired some months ago, absolutely nothing was done under that Ordinance. That is one thing.

Then, the Hon'ble Minister did not find it necessary to extent the Ordinance. It must have expired some three or four months ago. So its necessity was not felt when it was in force nor after it expired, till now. Then, why should we have a law on that? The object of legislation is not to load the statute book. It is to enact laws that are necessary to meet situations. Now, there is absolusely no situation, as far as the Ministers are concerned, that justifies it.

Secondly, a law was enacted in India for a fixed period, They extended it only with this object in view. They wanted to conclude all the cases they have already taken under the Act. It was mentioned clearly—the Minister in charge of the Bill made it clear when he wanted to extend the term of the legislation—that no fresh cases will be taken under the law. He wanted to conclude the cases already taken. That law was enacted when it was found to be necessary there, under the circumstances that existed there. During the war a lot of people made money. There was scope of unrestricted corruption throughout the country and many Government officers made money by illegal means. Government wantd to take action in respect of those people, no doubt also to prevent recurrence of such cases. They wanted more time to conclude the cases already taken. One can understand that. But now conditions are different. The war was over many years ago. Whatever situation there was has all gone and now a Bill is said to be passed into the law. What for? When it was in force our Government never met with an occasion to make use of it. I specifically asked the Chief Minister whether he sought information from anybody when that Ordinance was in force, with reference to a particular clause here. He said: 'No'. There was no occasion to do that. Then, why should we want a law? Not only that, this is going to be permanently on the statute book. Are we going to so radically deviate from our normal penal law for all time? If it were for a year or two, I can understand that. In fact, there were several cases also when the Government of India passed their law, and they were free to do it. Here, we are prevented by the Constitution, Article 20, not to apply this law to anything done by any Government servant, prior to the coming into force of this law. Under article 20 of the Constitution, anybody can proceed against the officer, only under the law that exists at the time, when the particular offence was committed. So, all past offenders, if they are alive, are clearly excluded from the operation of this law. They can be proceeded against only under the Penal Code. Now, the officers know that their friends have been placed under suspension—I do not want to say anything on the merits of the case—but those officers can be proceeded against only under the Penal Code, under the stringent provisions enacted there. Knowing this, are any officers hereafter going to commit offences for which they may be proceeded against under this law? It is not at all likely. Not only that. They should be proceeded against under the normal law. We cannot make this the permanent law of our land. The learned Advocate-General said we have got the right of enacting laws in respect of public

LIBRARY ARCHIVES Kerala Legislative Assembly

services and all that. Of course, I have my own difference of opinion in regard to that entry in the Concurrent List. To what extent we can deviate from the normal penal laws of the land, even though certain clauses may be connected with public service and all that, is a matter which is very doubtful and controversial. After all, what is the interpretation he puts upon that entry No. 1 in the Concurrent List is not to be so easily accepted. I am speaking subject to scrutiny. Whatever that be, should we have this as the permanent law of the land? Then, it will be very objectionable.

Then again, after all simply because we can make laws, even assuming we can make laws in which the Government servants are involved, that does not mean we can deviate from the Evidence Act, we can deviate from the Criminal Procedure, and we can substantially deviate from the Penal Code. Now, the provisions here are very few,—about 5 or 6 clauses only. One of them relates to presumptions; that is Evidence Act. We cannot deviate from the Indian Evidence Act. Another clause deals with criminal procedure. We cannot deviate from the Criminal Procedure Code. There is no purpose in doing so. It is not wise also to do it. Then there is a section which creates a new offence, what is called criminal misconduct. That cannot be applied to anything that has already taken place. There was absolutely no occasion to make use of this. At best this will give some work to the men in the Government Press to have some pages in our Statute Book. This is of no use. It violates all known principles of law and legislation. On all, these grounds, I very strongly oppose this motion that this Bill be passed.

Sri. D. Gnanasigamoni: In seconding the Hon'ble Member, Sri. Thanu Pillai's motion, I wish to speak a few words. In respect of matters covered by Mr. Thanu Pillai, I do not want to say anything. I have already had my say, but in respect of one matter, Mr. Thanu Pillai entertained a doubt as to the legality of any provision that we may pass here. There, I do not entirely agree with him, because, I am entirely in agreement with the view put forward by the Advocate-General, for the reasons which I shall State presently. The matter in controversy is covered by law here also. Section 184 of the Criminal Procedure Code deals with this matter in this country. Section 184 of the Criminal Procedure says: "When any of our subjects commits an offence at any place without and beyond the limits of Travancore he may be dealt with in respect of such offence as if it had been committed at any place within Travancore at which he may be found provided that no proceeding shall be instituted against any person under this section without the previous sanction of Our Government.

Provided further that if the offender has been duly tried by the State within whose limits such offence was committed or while proceedings in connection with such offence are pending in such State, nothing in this section authorises the Courts of this State to take cognizance of the offence". So that even if a Travancore subject commits an offence outside the State, in the Madras Province, say, he can be dealt with under the law of this land. That is clearly the provision under our Criminal Procedure Code. Then there is another proviso which says that 'Provided further that if the offender has been duly tried by the State within those limits such offence was committed or while proceedings in connection with such offence are pending in such State, nothing in this section authorises the Courts of this State to take cognizance of the offence".

Sri. A. Thanu Pillai: Is it not in conflict with the Indian Criminal Procedure Code?

Sri. D. Gnanasigamoni: No. In respect of the matter, the other courts beyond also have the absolute right to take cognizance of this offence. If they take up the case, this Court will not have the jurisdiction to try that offence. Otherwise as soon as he enters the State, the Courts here can take cognizance of the case. The only limitation is that enunciated by section 184 Criminal Procedure Code. Therefore I entirely agree with the view put forward by the Advocate-General. But in respect of the other matters to which Hon'ble Mr. Pattom Thanu Pillai referred, I also think that this legislation will be a dead letter. I have already stated all the reasons that I have to say about this legislation. No doubt far-reaching changes are brought about in this legislation in regard to the procedure to be followed in respect of offences falling under section 153 or section 157 of the Travancore Penal Code or the corresponding sections in the Cochin Penal Code. Clause 3 of this bill makes these offences cognizable which is not so under the existing law. Similar is the departure from the existing law in the other provisions in the bill. Clause 4 lays down a new rule of presumption while clause 11 lays down a new rule of evidence. These provisions are no doubt in conformity with the Indian Act. But this Government made a great departure from the Indian Act by introducing

LIBRARY ARCHIVES Kerala Legislative Assembly

[Sri. D. Gnanasigamoni]

new clauses like clauses 6 to 9. How far they are illegal, objectionable and unworkable, I had on various occasions in the course of discussions on this bill pointed out. Apart from the legality of it, there will be practical difficulty in the working of it. To that extent, I entirely agree with Mr. Thanu Pillai, and this legislation practically will have to remain a dead letter. With regard to the legality of applying the provisions to Government servants and others abroad, as I have indicated already, I am one with the Advocate-General, and I have no doubt on that point and there seems to be little basis for the doubt entertained by Hon'ble Mr. Thanu Pillai. So while supporting Hon'ble Mr. Thanu Pillai to the extent indicated above, I would appeal to this Government to reconsider this measure in the light of the suggestions already made, and bring another measure in conformity with the Act in the Indian Dominion. Otherwise we will be merely encumbering the statute book without any corresponding benefit.

ശ്രീ. ടി. കെ. നാരായണപിള്ള: സർ, എനിക്ക് അതിനു് മറുപടിയൊന്നും പറയുവാനില്ല.

The question, that the Bill be passed was put and carried.

The bill was passed.

മി. സ്പീക്കർ: മൂന്നു കമ്മിറ്റികളിലേക്കു് മെമ്പറന്മാരെ നിശ്ചയിക്കുന്നതിനു് ഇവിടെ ബാലറ്റു നടന്നിട്ടുണ്ടല്ലൊ. ആ വോട്ടുകൾ സൂക്ഷ്മമായി പരിശോധിച്ചു എണ്ണി തിട്ടപ്പെടുത്തേണ്ടതായിട്ടുണ്ടു്. അതിവിടെ ചെയ്യുന്നതാണു്. ബഹുമാനപ്പെട്ട അംഗങ്ങൾ എല്ലാം ആ സമയത്തു് ഇവിടെത്തന്നെ ഇരിക്കുന്നതിൽ വിരോധമില്ല. വോട്ടെണ്ണിക്കഴിഞ്ഞു് ഫലം അസംബ്ലി ആഫീസു് നോട്ടീസ്ബോർഡിൽ പ്രസിദ്ധപ്പെടുത്തുന്നതാണു്.

നിയമസഭയുടെ ഈ സമ്മേളനം അവസാനിപ്പിച്ചിരിക്കുന്നു.

The Assembly was prorogued at 6-30 p. m.

V. KRISHNAMOORTHY AIYAR
Secretary to the Legislative Assembly.

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